

 King County	Department of Adult and Juvenile Detention All Divisions General Policy Manual		
	<u>Chapter 1</u> Administration and Personnel Management		
1.04.002 - Investigations of Alleged Staff Misconduct	Approved By:	Director Allen Nance	
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	Reviewed By:	PRC, IIU Commander	
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Purpose

To provide protocol for investigating allegations of staff misconduct.

Policy

The Department of Adult and Juvenile Detention (DAJD) is committed to promptly, fairly, and thoroughly investigating allegations of staff misconduct.

References

Federal:	Prison Rape Elimination Act (PREA)
RCW:	43.101.105
King County Policies:	3.04 Code of Ethics
DAJD Policies:	1.01.001 - Code of Conduct 1.01.008 - Processing Staff Reports 1.03.015 - Employee Assistance Program 1.03.034 - Employee Punctuality 1.07.005 - Potential Impeachment Reporting 6.04.001 - Prison Rape Elimination Act JCpreaP-09.007 - Prison Rape Elimination Act (PREA)
Other:	Memorandum of Understanding: Seattle Police Department Memorandum of Understanding: Kent Police Department Memorandum of Understanding: King County Sheriff's Office

Definitions

Designated Reviewer: The member of management who is primarily responsible for reviewing forwarded investigations of alleged staff misconduct. The designated reviewers are:

1. Facility Major (Seattle and Kent Division)
2. Deputy Division Director (Community Corrections Division)
3. Deputy Division Director or Chief of Operations/Security (Juvenile Division)
4. Chief of Administration (Administrative Division)

Employee Bill of Rights: The enumerated rights that employees have during internal administrative investigations, including notice requirements, requirements pertaining to the conditions of interview, the recording or transcribing of the interview and the presence of legal counsel if there is an ongoing criminal investigation.

Garrity Admonishment: An admonishment informing a public employee that if they are compelled to answer questions during an administrative investigation that could subject them to criminal liability, the information and any derivative evidence may not be used in a subsequent criminal prosecution but may be used to discipline the employee administratively (*Garrity v N.J.*, 385 U.S. 493, 1967).

Internal Investigations Unit: A unit comprised of a Unit Commander and investigators whose primary responsibility is the administrative investigation of alleged staff misconduct.

Loudermill Hearing: A hearing that takes place before an employee is subject to discipline that includes property loss (i.e., suspension, termination, demotion, etc.) that provides the employee notice of the charges against them and affords the employee an opportunity to speak on their behalf as to why the recommended discipline should not be imposed (*Cleveland Board of Education v. Loudermill*, 105 S. Ct. 1487, 1985).

Memorandum of Understanding (MOU): Agreements entered into between DAJD, the Seattle Police Department, the Kent Police Department and the King County Sheriff's Office that establishes guidelines for the investigation of incidents that may occur inside the secured perimeter of DAJD's facilities, including which agency will be responsible for investigating the various types of incidents.

Preliminary Investigation: An investigation to determine if an alleged complaint is potential misconduct. This may include the interview of or reports from witnesses and all involved staff, except when such interviews of staff would be inappropriate in light of the Garrity decision.

A. General Guidelines

1. IIU is responsible for conducting and monitoring complaints of alleged staff misconduct involving employees as outlined in this policy.
 - a. The IIU Commander is responsible for all such investigations and reports directly to the Department Director.
2. IIU shall investigate complaints as a neutral factfinder and gather all reasonably available evidence concerning the allegation.
3. IIU is responsible for:
 - a. Forwarding allegations of employee misconduct that are criminal in nature to the appropriate investigating law enforcement agency in accordance with the MOU or the responsible law enforcement agency with jurisdiction.
 - b. Conducting criminal investigations that will not be handled by another law enforcement agency, in accordance with the MOU, and
 - c. Conducting administrative investigations of employee misconduct to include but not be limited to:
 - 1) DAJD policies
 - 2) Code of Conduct violations
 - 3) King County policies or ordinances
4. All employees shall fully cooperate with IIU investigations following policy [1.01.001 - Code of Conduct](#).
 - a. Employees will be informed that refusing a directive to answer job related questions may be considered insubordination which can lead to discipline, up to and including termination.
5. A represented employee who is accused of misconduct is entitled to be accompanied by a union or guild representative during any interviews as per the interviewed person's CBA.

6. A non-represented employee who is accused of misconduct may be entitled to be accompanied by a representative of their choice during an interview, subject to approval of the IIU Commander.
7. An accused employee who receives a Notice of Investigation or Request For Information from IIU and who is required to write a report as part of the IIU investigation may have their union or guild representative review their report prior to submission, this review may take no longer than 7 business days from the time the report is requested.
8. Criminal investigations of an employee's alleged on-duty misconduct shall be conducted in accordance with the MOU or the law enforcement agency with jurisdiction where the alleged misconduct took place.
9. Consistent with the Employee's Bill of Rights, an employee who is the subject of an ongoing criminal investigation may have outside legal counsel present during an administrative interview conducted by IIU. The representation is confined to counseling and not actual participation in the investigation. Absent an ongoing criminal investigation, outside legal counsel is not allowed at IIU interviews.
10. Consistent with the Employee's Bill of Rights, it is department policy to audio record all IIU interviews. In the event that an employee elects to not be audio recorded, the employee shall inform IIU in advance and a stenographer (court reporter) will be utilized to transcribe the interview.
11. IIU will be the sole entity to make audio recordings of IIU interviews and transcripts of audio recordings will be available upon the completion of the IIU investigation.
12. Any resident or detained youth crime handled by local law enforcement may have an IIU investigator assigned as a liaison to the investigating law enforcement agency at the discretion of the Internal Investigations Unit (IIU) Commander (or higher authority).
13. As part of the investigative process IIU will inform any employee being interviewed by IIU of the services enumerated in policy [1.03.015 - Employee Assistance Program](#).

B. Investigations of Alleged "Minor Violations"

1. "Minor violations" include but are not limited to:
 - a. Attendance (depending on the level of progressive discipline the involved staff member is at) following department policy [1.03.034 - Employee Punctuality](#).
 - b. Uniform and equipment violations.
 - c. Personal appearance violations.
2. A supervisor may take appropriate corrective action regarding minor violations, with the approval of the chain of command, without the need for an IIU referral or IIU investigation.
3. "Minor violations" may, alternatively, be referred for investigation by IIU if the complainant is outside the Department, they include repeated offenses that could result in a potential disciplinary action of suspension or higher, or if they are referred by the chain of command.

C. Investigations of Alleged Non – "Minor Violations"

1. For allegations of violations not covered under section B above, the involved Sergeant/Supervisor shall conduct a preliminary investigation that included:
 - a. Gathering reports from witnesses and staff
 - b. Forwarding all reports to the Shift Commander/Chief of Operations/Section Head.
2. The Shift Commander/Chief of Operations/Section Head will evaluate the severity of the allegation, determine whether the alleged violation potentially rises to a

suspension level of discipline or higher, and determine whether additional evidence should be gathered.

3. The Shift Commander/Chief of Operations/Section Head will generate a report that includes a summary of the incident and their investigation.
4. The Shift Commander/Chief of Operations/Section Head shall submit their report to the Designated Reviewer for their division.
5. The Designated Reviewer will review the investigation conducted by the Shift Commander/Chief of Operations/Section Head for compliance with Department policy and procedures, determine whether it needs to be referred to the Force Review Committee and/or IIU, and determine whether recommendations for revision to Policy and Procedures and/or review of training and/or equipment needs are needed.
6. Designated reviewers shall refer to IIU any allegations involving:
 - a. Sexual abuse or sexual harassment of residents/detained youths.
 - b. Unnecessary or excessive use of force.
 - c. Discrimination or harassment based on legally protected status.
 - d. Retaliation for a legally protected activity.
 - e. Workplace violence or domestic violence.
 - f. Other suspected criminal law violations.
 - g. Other policy violations, where the possible disciplinary action would be at the level of suspension or higher if the violation is sustained.
7. Designated reviewers may also refer to IIU allegations that do not fall under section 6 (a-g) above depending on the level of complexity of the case, the seriousness of the outcome (i.e., escape or injury to residents/detained youths) or other reasons, at their discretion.
8. IIU will conduct its investigation in accordance with section E below.

D. Direct Referrals of Allegations to IIU

1. IIU will also accept complaints or reports alleging misconduct from any source and it may be written or verbal. Possible sources of alleged violations include, but are not limited to:
 - a. Reports from staff or supervisors.
 - b. Resident/detained youth kites or grievances.
 - c. Complaints or reports from members of the public.
 - d. Complaints or reports from outside agencies.
 - e. Complaints or reports forwarded from Human Resources.
2. Any employee may make a complaint regarding staff-resident/detained youth sexual abuse/sexual harassment, possible criminal law violations, retaliation based on a legally protected activity or harassment based on a legally protected status directly to IIU.

E. Procedures for IIU Investigations

1. Upon receiving an allegation of staff misconduct as described above, the IIU Commander (or designee) shall:
 - a. Ensure that all alleged misconduct complaints or reports that are completed as part of the preliminary investigation are assigned for investigation by IIU.
 - b. Monitor the progress of all investigations.
 - c. Review all cases prior to forwarding them to the designated reviewer.
 - d. Prepare IIU cases for Department hearings.
 - e. Will schedule staff interviews during the staff members regularly scheduled shift, unless the staff member requests otherwise.

2. Completion of Investigation Reports
 - a. For each investigation, the assigned IIU Investigator shall:
 - 1) Complete an Investigative Report that may include:
 - a) Complaint or report.
 - b) Supervisor's Incident Report (SIR).
 - c) Officer's Reports.
 - d) Reports.
 - e) Notes or transcripts of interviews.
 - f) Audio, video, photographs, etc.
 - g) Any backup of documentation collected.
 - h) Final report of the investigator.
 - i) Recommended findings.
 - b. Forward the completed investigation to the IIU Commander.
 3. Timelines for Investigations
 - a. The IIU Commander is responsible for ensuring the timely conclusion of all IIU investigations, according to the following guidelines:
 - 1) In general, investigations should be completed within 120 days, including internal and external review and Loudermill Hearing. In the event that the investigation will take longer than 120 days, due to the complexity of the case, IIU workload, scheduling difficulties or any other reason, the IIU Commander shall ensure that the reasons for the delay are documented in the investigation file.
 - 2) The accused employee must be notified, in writing, as to the status and expected completion date for the investigation, including any review process. Such notifications are to be given when the investigation will exceed ninety (90) days, and then every thirty (30) days thereafter until the investigation is completed.
 - b. In cases involving possible criminal misconduct by employees that have been referred to a law enforcement agency for criminal investigation:
 - 1) IIU will suspend the administrative investigation until a filing decision has been made by the relevant prosecuting agency or a disposition has been reached by the investigating law enforcement agency. IIU will resume the administrative investigation after consulting with the investigating police agency and prosecutor's office.
 - 2) It is the policy of the department to conduct an administrative investigation, if warranted by evidence, regardless of whether criminal charges were filed, or a conviction resulted.
 - 3) The Director has the discretion to deviate from this policy if warranted by considerations of safety or efficiency.
 4. Findings of IIU Investigations
 - a. All IIU investigations shall be completed as thoroughly as reasonably possible. When completed, the investigation must be classified into one of the following categories based upon the preponderance of evidence:
 - 1) Unfounded: The allegation is false or not factual.
 - 2) Exonerated: The incident substantially occurred but was lawful and in compliance with policies.
 - 3) Non-sustained: There is insufficient factual evidence to either prove or disprove the allegation.

- 4) Sustained: The allegation is supported by factual evidence and was either unlawful or against policy.
- 5) Undetermined: The investigation cannot be completed due to circumstances beyond the control of the investigator, such as:
 - a) The complainant cannot be located.
 - b) The complainant is uncooperative.
 - c) The accused employee separated from the Department before being interviewed or did not respond to a post separation request to be interviewed by the department.
- b. If enough evidence has been collected to close an investigation with a classification of 1) through 4) above, an undetermined classification will not be used.
5. Review and Approval of Completed IIU Reports
 - a. For every completed investigation, the IIU Commander shall:
 - 1) Review investigative reports for thoroughness and accuracy. The IIU Commander is responsible for ensuring that investigations comply with this policy and Department guidelines. This may include making recommendations for conducting additional investigation.
 - 2) Make a finding for each allegation, in accordance with section E.4. above, in an investigative report.
 - 3) Forward the completed investigation to the Division Facility Commander/Division Director, via the Facility Major, Deputy Division Director or Chief of Operations, for review in the facility where the alleged behavior occurred.
 - 4) Ensure the complainant has been notified in writing when a case is completed.
 - 5) Ensure that the completed investigation is properly maintained in IIU.
 - b. The Facility Major, Deputy Division Director or Chief of Operations shall:
 - 1) Review the completed investigation to ensure thoroughness and fairness.
 - 2) Refer the case back to IIU, if appropriate.
 - 3) Forward to the Facility Commander, Division Director or Chief of Administration for disposition.
 - c. Upon recommendation for suspension level or higher discipline, the Department Director or designee shall:
 - 1) Schedule and conduct a Loudermill Hearing when requested by the employee.
 - 2) Review the completed investigation and make a decision regarding the action to be taken within fifteen (15) business days following the Loudermill Hearing and provide formal written notification to the employee and their collective bargaining unit.
 - 3) Sustain or change a finding decision regarding an allegation.
 - 4) Sustain or change a disciplinary recommendation by a Facility Commander, Division Director or Chief of Administration.
 - 5) Order further investigation if needed.

F. Procedure for PREA Investigations Involving Staff

1. All allegations of sexual abuse and sexual harassment by staff that are potentially criminal will be referred to the appropriate law enforcement agency in accordance with section A.10. above.
2. DAJD will ensure that contractors and volunteers who have been found to have committed sexual abuse of residents or detained youths in the custody of DAJD are

- reported to the relevant licensing bodies.
3. All administrative investigations (including those made by non-DAJD staff and through anonymous reports) of sexual abuse and sexual harassment by department staff will be handled by IIU.
 4. All investigations into allegations of sexual abuse and sexual harassment will be done promptly, thoroughly, and objectively.
 5. During criminal investigations of sexual abuse and sexual harassment, IIU will fully cooperate with the investigating law enforcement agency and request and retain with the case file the criminal investigation findings, rationale and summary of evidence.
 6. During administrative investigations of sexual abuse and sexual harassment, IIU shall:
 - a. Include an effort to determine whether staff actions or failures to act contributed to the abuse; and
 - b. Document its investigation in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings.
 - c. Not impose a standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated.
 7. The departure of the alleged abuser from the Department or the release of the resident/detained youth from custody shall not provide a basis for terminating an investigation.
 8. Investigations of sexual abuse shall not be terminated solely because the source of the allegation recants the allegation.
 9. Written reports referenced in sections 4 and 5.b. shall be retained for as long as the alleged abuser is incarcerated plus 5 years or as per the Washington State Records Retention Schedule, whichever is longer.
 10. Prior to being assigned to investigate an allegation of sexual abuse, Investigators shall receive specialized training in:
 - a. Conducting such investigations in confinement settings.
 - b. Techniques for interviewing (juvenile and adult) sexual abuse victims.
 - c. Proper use of Miranda and Garrity warnings.
 - d. Sexual abuse evidence collection in correctional settings.
 - e. The criteria and evidence required to substantiate a case for administrative action or prosecution referral.
 11. The Department shall maintain documentation of Investigators who have received specialized training in sexual abuse investigations.
 12. Reporting to residents or detained youths:
 - a. Following an investigation (criminal and/or administrative) into a resident or detained youth's allegation that they suffered sexual abuse while in the Department's custody, the Department shall inform the resident or detained youth as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded.
 - b. Following a resident or detained youth's allegation that a Department staff member has committed sexual abuse against the resident or detained youth, the Department shall subsequently inform the resident or detained youth (unless it is determined that the allegation is unfounded) whenever:
 - 1) The staff member is no longer posted within the resident or detained youth's unit.

- 2) The staff member is no longer employed at the facility.
 - 3) The Department learns that the staff member has been indicted or convicted on a charge related to sexual abuse in the facility.
- c. Following a resident or detained youth's allegation that they have been sexually abused by another resident or detained youth, the Department shall subsequently inform the alleged victim whenever:
 - 1) The Department learns the alleged abuser has been indicted or convicted on a charge related to sexual abuse within the facility.
- d. All such notifications shall be documented.
- e. The Department's obligation to report under section F.11 shall terminate if the resident or detained youth is released from custody.
13. IIU shall forward its investigation and other pertinent information to the PREA Coordinator within thirty (30) days of the conclusion of the investigation.
14. IIU shall forward the Sexual Abuse Incident Review Committee (SAIRC) agenda to the SAIRC members at least seven (7) days in advance of the review.
15. IIU shall prepare and maintain a report of all sexual abuse incidents/allegations to include the following information:
 - a. Findings of sexual abuse incidents/allegations.
 - b. Actions taken by the Department.
 - c. Operational changes made (if any).
 - d. Reason(s) why the incident/allegation was/was not reviewed by the SAIRC.
 - e. IIU shall submit the report of sexual abuse incidents/allegations to the PREA Coordinator at least seven (7) days in advance of the review.

G. Procedure for Complaints Involving IIU Personnel

- a. Complaints alleging misconduct involving IIU personnel shall be forwarded to the Director.
- b. The Director shall appoint personnel from another section or agency to conduct the investigation. All investigations shall be conducted in accordance with this policy.
- c. Completed investigations shall be maintained by IIU.